

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

<hr style="border-top: 1px solid black;"/> <div style="display: flex; justify-content: space-between;"><div style="width: 80%;"><p>In re:</p><p><b>F&amp;N CONSTRUCTION INC.,</b> a West Virginia corporation,</p><p style="text-align: center;">Debtor in Possession.</p></div><div style="width: 10%; text-align: center;">}</div><div style="width: 10%; text-align: center;">}</div></div> <hr style="border-top: 1px solid black;"/>	<p>Case No. 5:08-bk-50215</p> <p>Chapter 11</p> <p>Judge Ronald G. Pearson</p>
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**APPLICATION OF THE DEBTOR FOR AUTHORIZATION  
TO EMPLOY AUSTIN CAPERTON AND CAPERTON  
ENERGY COMPANY AS SALES CONSULTANTS**

Debtor in Possession, F&N Construction, Inc. (“F&N” or the “Debtor”), by counsel, Bailey & Glasser, LLP, seeks the entry of an order approving Austin Caperton and Caperton Energy Company (together, “Caperton”) to act as a sales consultant to F&N and the bankruptcy estate pursuant to 11 U.S.C. § 327 and Rule 2014 of the Federal Rules of Bankruptcy Procedure. In support of this application, the Debtor states as follows:

1. On August 10, 2008, the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. 1101, *et seq.*
2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (N).
3. F&N has proposed that the Court establish sales procedures to allow consideration of a proposed sale of F&N’s assets with Hunter-Williams Coal Corporation and to allow other prospective purchasers to conduct due diligence and submit higher and better bids.

4. F&N wishes to retain Caperton to act as a sale consultant in connection all sale matters presented in this case and to provide the following services:

(a) assist F&N in evaluating any and all proposals for the purchase of the assets of F&N;

(b) assist F&N in collecting, organizing and presenting due diligence materials, including coal reserve information, title information, mining permits and other data, available to prospective purchasers;

(c) interact with and solicit investment and coal industry parties who are interested in purchasing the assets of F&N;

(d) provide evaluation and expert witness services as may be necessary in connection with the review of any sales transaction by the Court, the Official Committee of Unsecured Creditors, and equity holders;

(e) take actions to assist the process established by any Court approved sale procedures and any Court approved auction; and

(f) assist F&N in the closing of any sale approved by the Court.

5. Caperton has extensive experience in the coal industry and in mergers, sales and acquisitions of coal assets and companies and are uniquely qualified to act as a sales consultant in this case. A resume of Caperton is attached hereto as Exhibit A.

6. The Debtor has, subject to the Court's approval upon application, notice and hearing, agreed to compensate Caperton as follows:

(a) Payment of time expended by Austin Caperton at the rate of \$325 per hour;

(b) Reimbursement of reasonable out of pocket expenses incurred by Caperton; and

(c) The potential award of a success fee, at the Court's discretion, to the extent of extraordinary results in connection with the sale process because of the acts of Caperton, upon application to the Court and subject to the comments of creditors, F&N and parties in interest.

7. To the best of Austin Caperton's knowledge, information and belief, and as set forth in the Declaration attached hereto as Exhibit B, Caperton and Caperton Energy Company have not represented or been employed by the Debtor, any creditors or any party-in-interest in this case; do not have interests adverse to any creditor or party-in-interest in this case and are disinterested persons.

WHEREFORE, F&N Construction, Inc. requests that the Court enter an Order in substantially in the same form proposed with this Application authorizing Caperton's employment *nunc pro tunc* to September 9, 2008.

Respectfully Submitted,

Dated: September 14, 2008

F&N CONSTRUCTION, INC.

By Counsel

/s/ Michele Mansfield Tysiak

Brian A. Glasser (WVSB # 6597)

Michele Mansfield Tysiak (WVSB # 10111)

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